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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/932,910 | 08/20/2001 | Gregory T. Whiteker | 1998U020AD1.US | 9327 |

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EXAMINER

PASTERCZYK, JAMES W

| | |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1755

DATE MAILED: 02/26/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/932,910

Applicant(s)
Whiteker et al.

Examiner
J. Pasterczyk

Art Unit
1755



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 20, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other: _____

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1. This Office action is in response to the IDS filed 8/20/01.

2. Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, l. 5, "the other heteroatom" suggests that there is only one other heteroatom, which is not clearly recited in the claim. The end of the claim should end with only one period.

In claim 5, it is not clear that the first, second, fourth, or last members of the closed Markush group are actually phenoxides since no clearly phenoxide ligand is recited. Structures of the compounds would be helpful to understand what makes them phenoxides.

In claim 6, l. 1, "further comprising an activator" suggests that an additional activator other than the one already recited as present in claim 1 is a component in the composition; is this the case, or should "further comprising an" be --wherein the--?

In claim 8, "Ziegler-Natta catalyst" is such a broad term, nowadays comprising both titanium halide/aluminum alkyl mixtures as well as metallocene/alumoxane mixtures, that it has lost any specific meaning, hence the claim is vague and indefinite.

In claim 11, l. 1 insert --an-- before "alumoxane" since that is a family of compounds instead of a single pure compound. In l. 2, it is not clear what the cation is for the fluoroaluminate anion. In the last line change "or a" to a comma.

In claim 12, p. 21, l. 1 change "may be" to --is-- for definiteness, in l. 3 change "may or may not be" to --is or is not-- for the same reason, in l. 7 make "R" --R¹⁻⁵--, in l. 10 insert

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--group-- after "ester", in l. 11 and 13 insert --part of a-- after "form" and --ring-- after "pyridine".

In claims 21, 22 and 35, make "R" --R¹⁻⁵--.

In claim 20 insert a comma after "pentyl".

In claim 29, change the semicolons in l. 3 and 4 to commas.

In claim 30, "the support" lacks positive antecedent basis since no support is recited in claim 12 from which this depends.

In claims 31-34 insert --molar-- before "ratios" if that is in fact what is meant.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1, 12, 16-18, 20, 26 and 35 are are rejected under 35 U.S.C. 102(b) as being anticipated by Bell et al., USP 4,981,931 (hereafter referred to as Bell).

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Bell discloses the invention as claimed (col. 3, l. 40-68; col. 4, l. 33-68; col. 5, l. 18; examples).

5. Claims 1, 2, 12, 13, 16-18 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 259 215 (hereafter referred to as Basset).

Basset discloses the invention as claimed (p. 3, l. 1 to p. 4, l. 45).

6. Claims 1-4, 7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagy et al., USP 5,637,660 (hereafter referred to as Nagy).

Nagy discloses the invention as claimed (col. 3, l. 40 to col. 4, l. 16; col. 5-6, example 3).

7. Claims 1-4 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Katayama et al., USP 5,840,646 (hereafter referred to as Katayama).

Katayama discloses the invention as claimed (abstract; col. 9, l. 58 to col. 12, l. 2; examples).

8. Claims 1-3, 12, 13, 16, 23, 24 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Coleman, III, Applied Catalysis, vol. 22, pp. 345-359 (1986) (hereafter referred to as Coleman).

Coleman discloses the invention as claimed (p. 346, bottom; p. 355, table 3).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Pasterczyk whose telephone number is (703) 308-3497. The examiner can normally be reached on M-F from 9 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached on (703) 308-3823. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 for normal faxes, 872-9311 for after final faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark L. Bell
Supervisory Patent Examiner
Technology Center 1700



J. Pasterczyk

2/20/03